



DECLARATION OF BECKY JOHNSON

IN SUPPORT OF

PETITION TO REVIVE U.S. PATENT APPLICATION 09/963,676

1. My name is Audrey "Becky" Johnson and I have worked as a Docketing Clerk in Fulbright & Jaworski's Washington DC office for the last two years.
2. From October 14, 2003 through December 13, 2003, I was the only docketing clerk working in Fulbright & Jaworski's Washington D.C. Office.
3. My job responsibilities include receiving correspondence from the United States Patent and Trademark Office (hereinafter "the USPTO"), recording receipt of correspondence from the USPTO into the docketing system used at Fulbright and Jaworski, generating Docket Reports for the attorneys within the Washington D.C. Office of Fulbright and Jaworski involved in the prosecution of patent applications and updating the docketing system.
4. In the performance of my normal duties, I enter all office actions received from the USPTO for U.S. patent applications being prosecuted through Fulbright & Jaworski's Washington D.C. Office into the docketing system.
5. U.S. Patent Application No. 09/963,676, entitled "Method and Apparatus for Measuring and Controlling Blade Depth of a Tissue Cutting Apparatus in an Endoscopic Catheter" is currently being prosecuted through Fulbright & Jaworski's Washington D.C. Office. Fulbright and Jaworski's attorney docket number for the prosecution of this patent application is BSX-219.

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6. As such, in the performance of my normal duties, I would enter any office action received in connection with U.S. Patent Application No. 09/963,676 (Attorney Docket No. BSX-219) into the docketing system.

7. I have reviewed the docketing records and have found no evidence that an Office Action mailed from the USPTO on December 4, 2003 was received for U.S. Patent Application No. 09/963,676 during December of 2003.

8. I have further reviewed the docketing records and have found no evidence that an Office Action was received for U.S. Patent Application No. 09/963,676 (BSX-219) between the time period September 30, 2003 through, and including, June 30, 2004.

9. To the best of my knowledge the Office Action mailed from the USPTO on December 4, 2003 for U.S. Patent Application No. 09/963,676 was not received by anyone in Fulbright & Jaworski's Washington D.C. office until Examiner Erezo sent a copy of the Office Action to Steven War on July 27, 2004 (an incomplete copy of the office action was sent on July 26, 2004).

10. In support of this declaration I enclose two exhibits. Exhibit One is a true and accurate copy of a report generated by Fulbright & Jaworski's docketing system for the time period of September 30, 2003 to June 30, 2004 detailing all three month office actions received for patent applications being prosecuted for Boston Scientific Corporation in the Washington D.C. Office of Fulbright & Jaworski. As can be seen from Exhibit One a three month Office Action was not received for BSX-219 during this time period. Exhibit Two is a true and accurate copy of Fulbright and Jaworski's Washington D.C. Office incoming mail log of PTO documents showing all correspondence from the USPTO from December 1, 2003 to June 30, 2004. The

corresponding patent application numbers of Exhibit Two have been redacted to protect the confidentiality of our clients and their matters. As can be seen from Exhibit Two our office did not receive any correspondence for BSX-219 from December 1, 2003 through June 30, 2004.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct. In accordance with 35 U.S.C. 25(b), the undersigned acknowledges that she understands willful false statements and the like are punishable by fine or imprisonment, or both (118 U.S.C. 1001).

Signed this 23th day of August 2004.



Becky Johnson
Becky Johnson
Docketing Clerk
Fulbright & Jaworski LLP